

Prepared by: RETURN:

Lynn Gelin, Esq.
City Attorney's Office
200 N.W. 1st Avenue
Delray Beach, Florida 33444

P.C.N.# 12-43-46-30-42-001-0000

WORKFORCE HOUSING COVENANT

THIS WORKFORCE HOUSING COVENANT (the "Covenant") is entered into as of the ____ day of _____, 2026, by and among the **City Of Delray Beach**, a Florida Municipal Corporation, (referred to herein as "**City**"), **KMF Alton Delray, LLC**, a Florida limited liability company, whose address is 105 NE 1st Street, Delray Beach, FL, 33444, (referred to herein as "**Developer**" which term shall include any assignee or successor to Developer as owner of the Development).

RECITALS

A. Pursuant to the provisions of Section 166.04151(7), Florida Statutes (the "**Live Local Act**"), the development of multifamily and/or mixed-use multifamily projects in certain commercial and industrial zoning districts shall be authorized provided that such projects include a minimum of 40% of the total number of units as *affordable* housing, as defined by Section 420.0004, Florida Statutes, for a minimum period of 30 years; and

B. Developer has proposed a project pursuant to the Live Local Act with respect to that certain real property located at 2101 S. Congress Avenue, Delray Beach, FL more particularly described in **Exhibit "A"** which is attached hereto and incorporated by reference herein (the "**Real Property**").

C. On December 8, 2025, the City issued a certain Certification Letter (File No. 2024-247-SPR-LV3) for an Administrative Approval of Level III Site Plan (the "**Approved Site Plan**"), authorizing the development of 386-unit multifamily building, 1,784 square feet of industrial uses, and associated improvement (the "**Project**") upon the Real Property, of which 155 of said units are to be set aside for affordable housing ("**Workforce Unit(s)**"). A copy of the Certification Letter is attached hereto as Exhibit "B".

D. This Covenant is to be recorded against the Real Property in the Public Records of Palm Beach County, Florida.

E. This Covenant shall apply and be enforceable against Developer and all current and future owners, as applicable, during the term of this Covenant and shall restrict the sale, resale, and use of the Workforce Unit as provided herein.

NOW, THEREFORE, City and Developer hereby agree as follows:

I. DEFINITIONS

The following terms not otherwise defined herein shall have the meanings set forth below for purposes of this Covenant, and if a term is defined in the Regulations, the Covenant shall control:

- 1.1. **Adjusted Median Income (A.M.I.)** – The Palm Beach County median income, based on a family of four, as published by Florida Housing Finance Agency.
- 1.2. **Affordability Controls** – Restrictions placed on the Workforce Unit by which the income of the lessee will be restricted in order to ensure that the Workforce Unit remains affordable to those households which qualify as Moderate-Income Households.
- 1.3. **City** – The City of Delray Beach, Florida.
- 1.4. **Development** – The Real Property located at 2101 S. Congress Avenue, Delray Beach, FL, consisting of 1,784 square feet of industrial use and 386 multifamily units for rent, of which 155 will be offered for rent to a Moderate Income Household.
- 1.5. **Eligible Occupant** – A household who is income eligible to own a Workforce Unit.
- 1.6. **Household** – A single person living alone, or two (2) or more persons sharing residency, with a combined income available to cover household expenses.
- 1.7. **Moderate Income Household(s)**– A Household with a gross, combined income between 81% and 120% of the Palm Beach County Adjusted Median Income (as defined by the Florida Housing Finance Corporation) as published more specifically in the “Income Limits Florida Housing Finance Corporation CWHIP Homeownership Program” table for West Palm Beach – Boca Raton HMFA (Palm Beach) area.
- 1.8. **Transfer** - Any sale, assignment or transfer, voluntary or involuntary, or by operation of law (whether by deed, contract of sale, gift, devise, bequest, trustee’s sale, deed in lieu of foreclosure, or otherwise) of any interest in a Workforce Unit, including but not limited to, a fee simple interest, a joint tenancy interest, a tenancy in common, a life estate, or any interest evidenced by a land contract by which possession of such Workforce Unit is transferred while the existing Workforce Unit owner retains title.
- 1.9. **Unit Lessee** -The lessee at any time of a Workforce Unit within the Development.
- 1.10. **Workforce Unit(s)** – Any of the 155 multifamily units within the Development offered for rent to a Moderate Income Household.

II. RENTAL OF THE WORKFORCE UNIT

2.1. The Workforce Units shall be subject to this Covenant, and each lessee of a Workforce Unit shall be an Eligible Occupant.

2.2. In no event shall a Workforce Unit be used for transient, interval or timeshare rental or ownership.

2.3. At all times, the units in the Development must include 155 Workforce Units reserved for occupancy by Eligible Occupants. Workforce Unit(s) need not be limited to particular designated units within the Project, provided that there must be at least 155 Workforce Units at any given time.

2.4. Except as provided in Section 4.7.5 of the City's Land Development Code, and Section 2.5 of this Covenant, no Workforce Unit shall be rented to the general public until all requirements of this Covenant are met.

2.5 In order to maintain status as a Moderate Income Household, the Developer must annually re-certify household income in the same manner as the first year of eligibility. If, upon re-certification of the income of the Moderate Income Household already occupying an Affordable Unit, it is determined that the income of the Moderate Income Household has increased and now exceeds the income limits, the Developer must either render the Workforce Unit vacant and available for rent to prospective tenants that meet the requirements to be a Moderate Income Household or reclassify the unit as a market-rate unit and designate a currently vacant market-rate unit, if available, as a Workforce Unit to ensure compliance with section 2.3 of this Agreement. In the event there is not a vacant unit, the next available unit shall be designated as a Workforce Unit and the Developer shall not be considered in default

III. ADDITIONAL RESTRICTIONS AND EXCEPTIONS

3.1. **Subsequent Rental of Workforce Units.** To maintain the availability of Workforce Units, the following rental conditions are imposed:

a. The Workforce Units shall remain affordable for a period of no less than forty (40) years from the date of recording of this Covenant in the Public Records of Palm Beach County, Florida.

b. Workforce Units must be offered for rent to Eligible Occupants except as otherwise provided by this Covenant.

3.2. Workforce Units may not be sublet or assigned to a tenant(s) whose income exceeds the percent of AMI under which the Workforce Unit was originally approved except as otherwise provided by this Covenant.

3.3. Household income is determined by the cumulative income of all tenants intended to occupy the Workforce Unit.

3.4. The forms of the lease of a Workforce Unit, limited only to those provisions, if any, necessary to fulfill the requirements of this Covenant, shall be approved in advance for compliance with this Covenant by the City Attorney.

3.5. To ensure the Developer's compliance with the Affordability Controls and restrictions contained in this Covenant, not later than the tenth (10th) day of each calendar month for the first year and the tenth (10th) day of January, April, July, and October every year thereafter during the term of this Covenant, Developer shall deliver a written report ("Report") to the City containing such information and documents the City may require to verify that the Developer is in compliance with this Covenant. The Report shall be current as of the first day of the month in which the Report is delivered to the City. The form of the Report shall be approved by the City Attorney. At a minimum, the Report shall contain the following information and documents with respect to the Workforce Units:

3.5.1. With respect to the Workforce Unit lease:

- a. Name and address of the Workforce Unit's Eligible Occupant and each member of the Household;
- b. Date lease term commenced;
- c. Date lease term terminates;
- d. Amount of monthly rent due under the lease;
- e. Household income;
- f. Number of bedrooms and baths in the Workforce Unit;
- g. Household size; and

3.5.2 With respect to the Workforce Unit:

- a. Availability status; and
- b. When the last lease of the Workforce Unit was terminated, if vacant.

3.6. The Report shall be executed under oath by the Developer or its authorized agent or representative.

3.7. At any reasonable time and from time to time, after first providing the Developer or Unit Lessee with not less than twenty-four (24) hours advance written notice, except in the case of an emergency, when less advance notice may be given, the City may enter the Development, but not the individual units, for the purpose of conducting personal interviews with management staff

or consenting Unit Lessee and obtaining other information reasonably necessary to verify Developer's compliance with this Covenant.

3.8. Developer, tenant, and occupant shall comply with all applicable Federal, State and local laws, rules, regulations and ordinances relating to the rental of the Real Property.

3.9. All Workforce Housing Units constructed or rehabilitated in the Real Property shall be situated within the Real Property so as not to be in less desirable locations than market-rate Units in the Real Property and shall, on average, be no less accessible to public amenities, such as open space, as the market-rate Units.

3.10. Workforce Housing Units shall be integrated with the rest of the Real Property and shall be compatible in exterior design, appearance, construction, and quality of materials and contain comparable HVAC systems and appliances with market rate Units and provide them as standard features. All Workforce Housing Units shall contain comparable square footage to the corresponding market-rate unit.

3.11. Nothing contained in this Covenant shall require a Unit Lessee to vacate a rental Workforce Unit if the Unit Lessee's income, respectively, later exceeds that of a Moderate Income Household, provided such Household initially qualified as Eligible Occupants for such lease.

IV. DURATION AND AMENDMENT

4.1. This Covenant shall remain in effect for forty (40) years from the date of recording of this Covenant in the Public Records of Palm Beach County, Florida. This Covenant shall apply to any replacement structure or structures constructed if a Workforce Unit is demolished or destroyed.

4.2. **Covenant Running With Land.** The terms of this Covenant constitute covenants running with the Real Property. The terms of this Covenant constitutes covenants running with each designated Workforce Units. This Covenant shall bind, and the benefit hereof shall inure to, Developer, the Unit Lessees, and the City, and any heirs, legal representatives, executors, successors and assignees thereof. The Workforce Units shall be held, conveyed, hypothecated, encumbered and occupied subject to the covenants, restrictions and limitations set forth herein. Any buyer, or transferee of a Workforce Unit or any portion thereof, by acceptance of a lease therefor, or by the signing of a lease, shall, by acceptance of such lease or by the signing of such contract or agreement, be deemed to have consented to and accepted the covenants, conditions, restrictions and limitations set forth herein, whether there is any express reference to this Covenant in such deed or contract. Upon the sale or transfer of the Property, Developer shall be automatically released and discharged from all obligations under this Agreement arising after the date of such transfer.

4.3. **Amendment.** This Covenant may be amended at any time by a recorded document executed and acknowledged by the Developer and the City.

V. ENFORCEMENT

5.1. **Right to Enforce.** The City reserves, and Developer and all proposed lessees of the Workforce Units are deemed to have granted the City, the right to review and enforce compliance with all provisions of this Covenant, as further set forth in this Article V.

a. In the event that the City has reasonable cause to believe that the Developer, lessee, occupant, or Household is in default of any of the provisions of this Covenant, then the City Manager, or his or her designee, may inspect the Workforce Unit owned by the Developer or such Unit Lessee at any reasonable time and from time to time, after providing the Developer or lessee not less than twenty-four (24) hours advance written notice with disclosure of the reasonable cause, except in the case of an emergency when less advance notice may be given.

b. Except in the case of a default which constitutes an incurable default or involves the health, safety and welfare of Households in the Development, or in the case of an emergency (in which events no notice and opportunity to cure is required), in the event of any other default under this Covenant, the City shall give the Developer, lessee, or Household Occupant who is in default, thirty (30) days written notice of such default, which notice shall state the nature of the default. If the default is not cured to the satisfaction of the City within thirty (30) days from the giving of such notice, or immediately when no notice and opportunity to cure is required, the City may pursue any or all remedies available to it, as set forth in Section 5.1(c) below.

c. The City hereby reserves the right to enforce this Covenant by pursuing any and all remedies provided by law or in equity. The City's remedies shall include, by way of example and not limitation, the right to specific performance of this Covenant, the right to a mandatory injunction requiring the lease of the Workforce Unit in conformance with this Covenant, the disgorgement of profits received from any lease conducted in violation of this Covenant, the right to cancel and declare void the lease, the right to remove occupants, and damages and injunctive relief for breach of this Covenant. All remedies available to the City shall be cumulative, and the City's election to pursue any remedy shall not preclude the City for then or later pursuing any one or more other remedies.

d. In the event City resorts to litigation with respect to any default under this Covenant, the prevailing party shall be entitled to recover its damages and costs, including expert witness fees. The party in default hereunder shall be responsible for the costs required to enforce the provisions of this Covenant. Venue for any action for breach of, or to enforce, this Covenant shall be properly in Palm Beach County, Florida.

e. In the event any Workforce Unit is transferred or leased in a manner that is not in full compliance with the provisions of this Covenant, such transfer or lease shall be wholly null and void and shall confer no title or rights whatsoever upon the purported transferee or lessee.

5.2. **Priority of Covenant.** This Covenant shall be senior to, and shall not be

subordinated to, any lien or encumbrance, including without limitation, any Institutional Lender, and shall survive and not be extinguished by the foreclosure or deed-in-lieu of foreclosure regarding any such liens or encumbrances. This includes, but is not limited to, judgment liens, assessment liens, tax liens, construction liens and mortgage liens.

5.3. **Lender's Right to Cure.** If Developer fails to perform any obligations of this Covenant, the lender, if there is one, may, but shall not be obligated to, at any time thereafter and without further notice or demand of Developer, take such action as lender deems necessary or desirable to cure any default.

VI. MISCELLANEOUS

6.1. **Third Party Beneficiaries.** There are no intended third-party beneficiaries of this Covenant, and no party other than the City shall have standing to bring an action for, breach of, or to enforce, the provisions of this Covenant.

6.2. **Notices.** Notices to any person or entity shall be given in writing and delivered in person or mailed, by certified or registered prepaid U. S. Mail, return receipt requested, or by electronic mail, or by a reputable overnight courier service (such as FEDEX), to the person's or entity's representative set forth below (as may be changed by notice from time to time) at the address set forth below:

Notices to the City shall be sent to:

City of Delray Beach
100 N. W. 1st Avenue
Delray Beach, Florida 33444
Attention: City Manager

With a copy to:

City of Delray Beach
100 N. W. 1st Avenue
Delray Beach, Florida 33444
Attention: Director of Neighborhood & Community Services

With a copy to:

City Attorney
City of Delray Beach
200 N. W. 1st Avenue
Delray Beach, Florida 33444

Notices to the Developer shall be sent to:

Jeff Quinlivan

KMF Alton Delray, LLC
105 NE 1st Avenue
Delray Beach, Florida 33444

With a copy to:

U.S. Bank, N.A.
214 N. Tyron Street
Charlotte, North Carolina 28202

Notices to a lessee of a Workforce Unit may be given in like manner addressed to the applicable Workforce Unit. Such notice shall be deemed given when hand delivered or when deposited, postage prepaid, in the United States mail.

6.3. **Severability**. If any provision of this Covenant shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions shall survive and their validity, legality and enforceability shall not in any way be affected or impaired thereby, and the court may, but shall not be required to, fashion a substitute for the provision held to be invalid or unenforceable.

6.4. **Headings**. The headings of the sections in this Covenant are for convenience only and shall not be used to interpret the meaning of any provision hereof.

6.5. **Homestead Waiver**. This Covenant is prior and superior to the owner of the Workforce Unit's right to a homestead exemption. Each owner of a Workforce Unit waives that owner's homestead rights to the fullest extent that they conflict or impair the City's rights and remedies under this Covenant.

6.6. **No Guarantee**. Nothing herein shall be construed or give rise to any implied representation, warranty or guarantee, and the City expressly disclaims, that any owner of a Workforce Unit will be able to resell his or her Workforce Unit for the maximum purchase price or recover the purchase price for such Workforce Unit. Such owner of a Workforce Unit recognizes and accepts that his or her Workforce Unit may be less marketable than other Workforce Units in the Development and may not sell for as great a purchase price.

6.7. **Governmental Functions**: Notwithstanding anything to the contrary contained in this Declaration:

a. Even though the City has certain contractual obligations under this Covenant such obligations shall not relieve any person subject to this Covenant from complying with all applicable governmental regulations, rules, laws, and ordinances;

b. To the extent approval or permission must be obtained from the City, such approval or permission shall be granted or denied in accordance with applicable governmental regulations, rules, laws, and ordinances, and no person shall have any vested rights;

c. The City has not waived its sovereign immunity; and

d. Any action by City shall be without prejudice to, and shall not constitute a limit on, impairment or waiver of, or otherwise affect City's right to exercise its discretion in connection with its governmental or quasi-governmental functions.

6.8. DEVELOPER AND CITY HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE THE RIGHT ANY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS COVENANT AND ANY AGREEMENT EXECUTED IN CONJUNCTION HERewith OR THEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY.

6.9. This Agreement constitutes the entire agreement between City and Developer.

6.10. In the event Developer is delayed in the performance of its obligations hereunder due to acts of God, strikes, or other causes beyond its reasonable control and without its fault or negligence, the time for performance shall be extended for a period equal to the duration of such delay. Notwithstanding, a force majeure event shall not excuse the Developer from its ultimate obligation to provide Workforce Units under this Agreement. Economic hardship or changes in market conditions shall not constitute a force majeure event.

6.11. **Recordation**. The parties acknowledge and agree that this Covenant shall be recorded in the Public Records of Palm Beach County, Florida, and shall be a covenant running with the Real Property.

6.12. **Venue**. This Agreement shall be governed by the laws of the State of Florida. The venue for actions arising out of this Agreement shall be Palm Beach County, Florida.

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ATTEST:

CITY OF DELRAY BEACH, FLORIDA

Alexis Givings, City Clerk

By: _____
Thomas F. Carney, Jr., Mayor


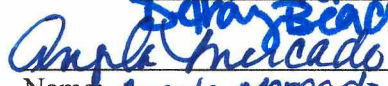
Approved as to legal form
and sufficiency:

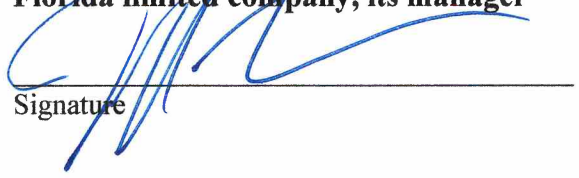
Lynn Gelin, City Attorney

Signed, sealed and delivered
in the presence of:

**KMF ALTON DELRAY, LLC, a Florida
limited liability company**

**By: The KOLTER GROUP, LLC, a
Florida limited company, its manager**


Name: Sasha Faraday
Address: 105 NE 1st St
DeLray Beach, FL 33444

Name: Angela Mercado
Address: 105 NE 1st Street
DeLray Bch. FL 33444



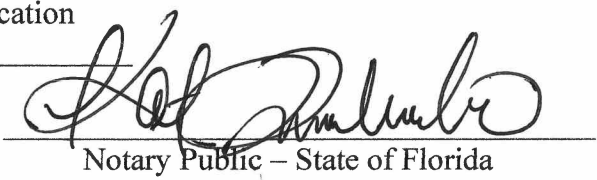
Signature

By: JEFF QUINLAN AUTHORIZED
(Name Printed and Title) SIGNATORY

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 12 day of May, 2026 by Jeff Quinlan (name of person), as Authorized Signatory of authority) for the Kolter Group, LLC, as manager for KMF Alton Delray, LLC (name of party on behalf of whom instrument was executed).

Personally known OR Produced Identification
Type of Identification Produced _____



Notary Public – State of Florida

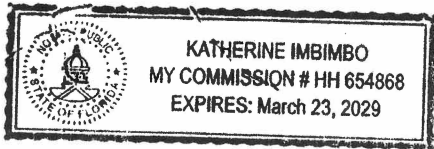


EXHIBIT "A"
Legal Description of Real Property

ALL OF THE PLAT OF ALTON DELRAY, ACCORDING TO THE MAP OR PLAT THEREOF, AS RECORDED IN PLAT BOOK 140, PAGES 139 THROUGH 141, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

EXHIBIT "B"
Certification Letter



CITY OF DELRAY BEACH
DEPARTMENT OF DEVELOPMENT SERVICES
100 N.W. 1ST AVENUE • DELRAY BEACH • FLORIDA 33444 • (561) 243-7040



December 8, 2025

Ailish Villalobos
Urban Design Studio
610 Clematis Street, Ste. #CU-02
West Palm Beach, FL 33401

RE: Administrative Approval for Alton Delray, File No. 2024-247-SPR-LV3, 2101 South Congress Avenue, Level 3 Site Plan Application- Live Local Act

Dear Ms. Villalobos,

Please be advised that the Level 3 Site Plan Application for Alton Delray has been reviewed for compliance and hereby **APPROVED** pursuant to Section 166.04151(7), Florida Statutes, the Live Local Act, together with the administrative review authority established in Land Development Regulations (LDR) Section 2.4.10(A)(2)(a).

The administrative nature of this approval is mandated by Florida Law and is not discretionary. Florida Statute Section 166.04151(7)(a) requires that municipalities must allow multifamily and mixed-use residential developments in commercial or industrial zoning districts when at least 40 percent of the total residential units in a proposed multifamily development are provided as rental units that remain affordable for a period of at least 30 years. Florida Statutes 420.0004 defines "affordable" as housing for which "monthly rents or monthly mortgage payments including taxes, insurance, and utilities do not exceed 30 percent of that amount which represents the percentage of the median adjusted gross annual income for the households". The applicant has demonstrated compliance by proposing a restriction on 156 of the 386 units to households earning up to 120 percent of Area Median Income for not less than 30 years. Prior to the issuance of a building permit, the applicant shall provide a restricted covenant for the 156 workforce housing units and shall participate in the City's tenant qualification process to ensure compliance with the statutory threshold.

Florida Statutes Section 166.04151(7)(e) expressly states that "(...) a proposed development that meets the stipulated requirements shall receive administrative approval without requiring additional action by the governing body, provided it complies with the municipality's land development regulations for **multifamily use**. This includes consistency with the comprehensive plan, excluding provisions related to allowable densities, floor area ratios, height, and land use." As such, the Industrial (I) zoning of the subject property does not restrict or prohibit the multifamily use proposed, and no rezoning, conditional use, variance, waiver or comprehensive plan amendment may be required or imposed. The review has been limited to the non-preempted development standards of the Medium Density Residential (RM) Zoning District and other applicable LDR sections. Based on the documents submitted and the revisions incorporated into the final plan set, staff finds the application compliant with all applicable non-preempted provisions of the LDR.

The approval is specific to the construction of a 386-unit mixed-use development, including 1,784 square feet of industrial space. The development includes three five-story residential buildings, one of which incorporates the industrial component; two six-story residential buildings; a two-story clubhouse;

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and an attached two-story parking garage. A certified copy of the approved plans is enclosed for reference.

This approval does not authorize the commencement of the work. It is necessary to obtain a building permit and a certificate of completion/occupancy through the Building Division pursuant to LDR Section 2.4.13 and the Florida Building Code. Any future modifications to the approved plans must comply with all applicable regulations of the Live Local Act and the LDR and is subject to additional staff review to confirm compliance.

Prior to issuance of a Building Permit:

1. Record the associated Minor Plat.
2. Provide documentation confirming LEED Silver or equivalent for the development.
3. Provide a restricted covenant for the 156 workforce housing units. The development shall participate in the City's tenant qualification process for all workforce housing units.
4. Record the amended lease agreement for the antenna tower site area.

Please note that pursuant to LDR Section 2.2.4(F), Approvals of Site Plan applications shall be valid for a period of 24 months. As such, the expiration date for this approval is **December 8, 2027**, at which time the approval shall either be considered established or expired. All approvals shall be considered established when improvements representing 25 percent of the total cost of all improvements - excluding demolition - associated with the project approval have been completed, or a certificate of occupancy has been issued for use of the property pursuant to the development approval.

Should you have any questions, please reach out via email, rosenberg@mydelraybeach.com or rodriguess@mydelraybeach.com.

Sincerely,



Alexis Rosenberg
Senior Planner
Department of Development Services